

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 23, 2015

Diane M. Fremgen
Clerk of Court of Appeals

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Appeal No. 2014AP1958

Cir. Ct. No. 2012FA4744

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

IN RE THE MARRIAGE OF:

KATALIN E. SOBCZAK,

PETITIONER-RESPONDENT,

v.

ERIC J. SOBCZAK,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: MARSHALL B. MURRAY, Judge. *Affirmed.*

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 CURLEY, P.J. Eric J. Sobczak appeals the judgment divorcing him from Katalin E. Sobczak. Eric contends that the trial court erred by: declaring that the proceeds of Katalin's sister's life insurance policy were

non-marital and awarding them to Katalin; and denying maintenance to Eric, who retired before the marriage ended. We affirm.

BACKGROUND

Nature of the Case

¶2 In July 2012, after nearly twenty years of marriage, Katalin filed for divorce. At the time of the filing, Katalin was sixty-two and Eric was sixty-four. The marriage was the second for both of them and they did not have any children together.

¶3 After some delay,¹ the trial court conducted a contested hearing and subsequently issued the judgment at issue here. As relevant to this appeal, the trial court found that the value of Katalin's inheritance from her sister's life insurance policy was a non-marital asset. The court also denied Eric's maintenance request.

Katalin's Sister's Life Insurance Policy

¶4 In 2010, Katalin received the proceeds of a life insurance policy following the death of her sister, Georgy Marens. Although Katalin was the beneficiary of the \$50,000 policy, Marens' husband also claimed the proceeds. As a result of this dispute, Katalin and Eric hired an attorney to defend Katalin's interests. Ultimately, they settled with the brother-in-law by paying him \$5000, leaving Katalin with \$45,000.

¹ The case was adjourned for various reasons, including Eric's incarceration and his desire to obtain counsel.

¶5 Katalin and Eric deposited the proceeds into a joint preferred money market account to obtain a better interest rate. At the same time, they moved \$20,000 from another joint account into the joint preferred money market account. The parties do not dispute that Eric and Katalin went together to deposit the funds in the new joint preferred money market account.

¶6 The proceeds from the life insurance policy and the additional \$20,000 remained in the parties' joint preferred money market account until June 2012. Katalin, concerned that Eric was about to "waste" the money, transferred the money into her personal account. Katalin was concerned because Eric had recently left the house, withdrawn \$1200, *i.e.*, the amount of his social security check, from the joint checking account, and told Katalin "that he had given away a hundred dollars as a tip or something to somebody." Katalin initially deposited the entire withdrawn amount, more than \$62,000, into an account in her name, but in February 2013, she withdrew \$45,000 and put it in a separate account.

¶7 At the divorce hearing, Katalin testified she did not intend to give any of Marens' life insurance proceeds to Eric—although she did acknowledge they never discussed the funds or how she would use them. When asked why she initially placed the money in the joint account, Katalin answered, "I guess I was old fashioned and did things the way married couples do."

¶8 Eric testified that he never expected any portion of the life insurance proceeds. Eric testified that he had agreed to hire a lawyer so that Katalin "could get her inheritance" and knew that Katalin had indeed received the money, but never expected that his wife would share it. He further testified that Katalin had never told him that she was going to share the money with him.

¶9 The circuit court determined that the \$45,000 from Georgy Marens' life insurance policy was non-marital property:

The nonmarital property which I found to be nondivisible is the \$45,000 inheritance of the petitioner. I base that on the testimony of Mr. Sobczak who told me ... when the sister passed away that her husband challenged -- wanted to challenge the will where Mrs. Sobczak was given 45 or \$50,000 and he advised Mrs. Sobczak to go get a lawyer so she can protect those dollars and she did so and even though they put the money into a money market account, the impression I got from Mr. Sobczak was that this was [Katalin's] money and he helped her to preserve that money and so I find that that inheritance which clearly came from the sister and came during the time of the marriage to not be a marital asset -- to not be a marital asset. That's my rationale for making that decision.

¶10 The trial court also found, and the parties do not dispute, that Eric testified that Katalin "is not a liar."

Maintenance

¶11 At the time of the divorce hearing in July 2014, Katalin was working full-time. Her salary was \$4023 per month and she received monthly pension and retirement funds in the amount of \$44 per month—yielding a total gross monthly income of \$4067. Katalin further testified at the hearing that, at age sixty-four, she was "very strongly considering retiring" at age sixty-five. Katalin explained that she has Crohn's disease, an inflammation of the intestines, which has resulted in her having several major surgeries, being on disability for four to five years when she was younger, and which has made her current workload and daily tasks "difficult to deal with and just to maintain."

¶12 Eric, on the other hand, had already retired several years earlier. Prior to his retirement, Eric had worked a series of jobs. Katalin testified at the

hearing that, following a layoff in 2002, Eric found work through the years at a gas station, a car-rental agency, a hardware store, and a couple of construction firms before again being laid off in 2008. After the 2008 layoff, Eric “sent out resumes, but that didn’t last very long.” When Eric’s unemployment compensation ran out, he and Katalin decided that Eric would retire and begin collecting Social Security benefits, which were deposited into the parties’ joint checking account. Eric had a monthly gross income of \$1336, comprised of \$1259 in Social Security payments and \$77 in pension to which he was entitled but for which he had not yet applied.

¶13 At the divorce hearing, Eric testified that he thought \$1000 in monthly maintenance would be fair. Katalin requested that she not be ordered to pay maintenance, however, and she testified that she did not want to pay maintenance because she had paid Eric enough through the years.

¶14 The trial court denied Eric’s maintenance request. In its oral ruling, the court explained:

As to the issue of maintenance after considering all of the factors listed in [WIS. STAT. §] 757.56, I did go through those and looking at Mr. Sobczak’s ability to work, the length of the marriage, his needs versus, not versus but also the petitioner’s needs as well, his debts, the income of both, the ability to work, Mr. Sobczak’s ability to work, the ability of Mrs. Sobczak to keep working, and I decided that Mr. Sobczak should be denied maintenance. Mr. Sobczak may have retired but many of us, many people retire from what they are doing now and still have to work. They retire from one form of the employment and move onto others.... I don’t know that Mr. Sobczak can afford to be retired, maybe he can. I took that into consideration when I divided the marital property. That’s another reason why I included Mrs. Sobczak’s premarital pension which she asked me not to keep in there, that some of those monies should go to Mr. Sobczak to maybe help him get back on his feet and get a job and if he were to work if I were to impute to him a minimum wage job at 40 hours a week that

would be \$1300 gross per month so I find that he can support himself. He does not need the financial care of Mrs. Sobczak so, therefore, I am denying him maintenance.

¶15 In addition, in the addendum to the judgment of divorce, the trial court reasoned:

After considering all of the factors listed in [WIS. STAT. §] 767.56, the Court finds that Mr. Sobczak is able to work to support himself and should not be supported by Mrs. Sobczak[,] who is suffering from an illness that could permanently disable her so that she is not able to work at the same level that she is presently employed. The [C]ourt further finds that ... the Respondent has the ability to work. That if the Court imputed a minimum wage of \$7.50/hour and a 40 hour work week to Mr. Sobczak, he would gross approximately \$1,300 monthly. So, for Mr. Sobczak [to] seek maintenance ... is unreasonable.

Appeal

¶16 Eric now appeals the judgment of divorce and addendum. Additional facts will be developed below.

ANALYSIS

¶17 Eric presents two primary arguments on appeal. First, he argues that the trial court erred in finding that the life insurance proceeds from Katalin's sister were non-marital property. Second, he argues that the trial court erroneously exercised its discretion by denying his maintenance request. In addition, Eric presents several other "errors of fact" that he claims "may have influenced the court's rulings." He claims, among other things, that the trial court may have undervalued their marital residence and overvalued his vintage *Playboy* collection. Eric does not ask for relief from these alleged errors, nor does he explain how these particular errors influenced the two primary errors he claims on appeal. Therefore, we will not address them further. See *State v. Waste Mgmt. of Wis.*,

Inc., 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) (we need not address insufficiently developed arguments).

¶18 As a general matter, the division of the marital estate and the award of maintenance are committed to the sound discretion of the trial court. *Sellers v. Sellers*, 201 Wis. 2d 578, 585, 549 N.W.2d 481 (Ct. App. 1996); *but see Derr v. Derr*, 2005 WI App 63, ¶¶9-13, 280 Wis. 2d 681, 696 N.W.2d 170 (division of non-divisible property is a question of law). We will uphold the trial court’s discretionary decisions so long as it “‘examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.’” *See LeMere v. LeMere*, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789 (citing *Long v. Long*, 196 Wis. 2d 691, 695, 539 N.W.2d 462 (Ct. App. 1995)). If the “‘trial court fails to adequately set forth its reasoning in reaching a discretionary decision, this court will search the record for reasons to sustain that decision.’” *See Long*, 196 Wis. 2d at 698.

(1) *The trial court did not err in finding that the proceeds from Katalin’s sister’s life insurance policy were non-marital.*

¶19 We turn first to Eric’s contention that the trial court erred in awarding the proceeds from Marens’ life insurance policy to Katalin. “The general rule is that assets and debts acquired by either party before or during the marriage are divisible upon divorce.” *Derr*, 280 Wis. 2d 681, ¶10. There is a statutory exception, however, for property acquired: (1) by gift, (2) by reason of death, including life insurance proceeds, or (3) with funds from either of the first two sources. *See id.*; *see also* WIS. STAT. § 767.61(2) (2013-14).² “When a party

² All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

to a divorce asserts that property ... is not subject to division, that party has the burden of showing that the property is non-divisible at the time of the divorce.” *Derr*, 280 Wis. 2d 681, ¶11.

¶20 Nonmarital property—in other words, the proceeds of the life insurance policy at issue here—“is exempt from property division if it retains its identity and character.” See *Steinmann v. Steinmann*, 2008 WI 43, ¶29, 309 Wis. 2d 29, 749 N.W.2d 145 (citation and emphasis omitted). “Identity ... addresses whether the gifted or inherited asset has been preserved in some present identifiable form so that it can be meaningfully valued and assigned.” *Id.* (citation omitted). “[T]he ‘character’ inquiry involves ... determining whether the owning spouse intended to donate non-divisible property to the marriage, that is, did the owning spouse have donative intent.” *Derr*, 280 Wis. 2d 681, ¶23. Our inquiry “is directed at determining the owning party’s subjective donative intent.” See *id.*, ¶31. “When an owning spouse acts in a manner that would normally evince an intent to gift property to the marriage, donative intent is presumed, subject to rebuttal by ‘sufficient countervailing evidence.’” *Id.*, ¶33 (citation omitted). For example, “[w]hen non-divisible funds are deposited in a joint bank account, even for a short time, donative intent is presumed.” *Id.*, ¶36.

¶21 Eric argues that the life insurance proceeds did not maintain their character. He points out that he and Katalin went together to deposit the money into a joint bank account, and that Katalin decided that the money should go into a joint account because she “was old fashioned and did things the way married couples do.” He also notes that the life insurance proceeds were commingled with an additional \$20,000 of marital property, and that after Katalin closed the joint account, it was another several months before she separated the \$45,000 from the other funds. Eric further argues that while Katalin testified that she never intended

to gift the money to him, there was no evidence showing that she did not intend to gift it to the marriage.

¶22 We are not convinced by Eric’s arguments. While Katalin did commingle the life insurance proceeds with marital funds, \$45,000 was later separated out and was able to be “‘meaningfully valued and assigned.’” *See id.*, ¶15 (citation omitted). Therefore, the gift retained its identity. In addition, there is no dispute that the life insurance money was meant to be a gift from Marens to Katalin, and that both parties saw it that way. Indeed, Eric testified that he never expected to receive any portion of the proceeds, and characterized the money as *Katalin’s* inheritance. Furthermore, he testified that Katalin does not lie, which lends weight to her testimony that she intended for the inheritance to remain hers, despite the fact that she initially did “‘things the way married couples do” and put the money into a joint account. For all of these reasons, we are satisfied that Katalin rebutted the presumption of donative intent, and that the property remained non-divisible. *See Derr*, 280 Wis. 2d 681, ¶33. Therefore, the trial court did not err in awarding all of the proceeds of Marens’ life insurance policy to Katalin.

(2) *The trial court did not err in denying maintenance.*

¶23 We turn next to Eric’s argument that the trial court erred in denying him maintenance. WISCONSIN STAT. § 767.56 governs maintenance awards. Section 767.56(1c) provides:

Upon a judgment of ... divorce, ... the court may grant an order requiring maintenance payments to either party for a limited or indefinite length of time ... after considering all of the following:

- (a) The length of the marriage.

(b) The age and physical and emotional health of the parties.

(c) The division of property made under s. 767.61.

(d) The educational level of each party at the time of marriage and at the time the action is commenced.

(e) The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.

(f) The feasibility that the party seeking maintenance can become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and, if so, the length of time necessary to achieve this goal.

(g) The tax consequences to each party.

(h) Any mutual agreement made by the parties before or during the marriage, according to the terms of which one party has made financial or service contributions to the other with the expectation of reciprocation or other compensation in the future, if the repayment has not been made, or any mutual agreement made by the parties before or during the marriage concerning any arrangement for the financial support of the parties.

(i) The contribution by one party to the education, training or increased earning power of the other.

(j) Such other factors as the court may in each individual case determine to be relevant.

¶24 The statute is “designed to further two objectives: support and fairness.” *Finley v. Finley*, 2002 WI App 144, ¶10, 256 Wis. 2d 508, 648 N.W.2d 536. The support objective “ensures the spouse is supported in accordance with the needs and earning capacities of the parties.” *Id.* The fairness objective “ensures a fair and equitable arrangement between the parties in each individual case.” *Id.*

¶25 When determining the appropriate maintenance award, the trial court must “start with ‘the proposition that the dependent partner may be entitled to 50 percent of the total earnings of both parties’ and then make any needed adjustments after considering the WIS. STAT. § 767.56 factors.” *See McReath v. McReath*, 2011 WI 66, ¶45, 335 Wis. 2d 643, 800 N.W.2d 399 (citation omitted). “Notwithstanding the proscribed starting point, ‘[t]he payment of maintenance is not to be viewed as a permanent annuity.’” *Id.* (citation omitted; brackets in *McReath*). Instead, “maintenance is ‘designed to maintain a party at an appropriate standard of living, under the facts and circumstances of the individual case, until the party exercising reasonable diligence has reached a level of income where maintenance is no longer necessary.’” *Id.* (citation omitted).

¶26 Eric takes issue with several components of the trial court’s decision to deny him maintenance. He argues that the trial court: (a) did not start with the proposition that he was entitled to half of the parties’ total earnings; (b) wrongly imputed income to Eric because he had already retired, and moreover, that his decision to retire was reasonable given his age and various health difficulties; (c) held the parties jointly responsible for the maintenance and other expenses concerning the marital home when Eric no longer lived there; and (d) wrongly assumed that Katalin’s Crohn’s disease could affect her ability to work. We disagree.

¶27 While the trial court did not specifically state that it was starting with the proposition that the parties were each entitled to half their total earnings, *see id.*, it is clear from the record that the trial court not only did so, but also carefully considered the statutory factors and the fairness and support objectives when denying maintenance to Eric. The trial court stated that it considered the parties’ abilities to work, the length of the marriage, both parties’ financial needs,

Eric's debts, and the incomes of both parties. The trial court further explained that, despite the fact that Katalin had asked the court not to consider her premarital pension as divisible, it was included in the marital estate to help Eric "get back on his feet and get a job." This is exactly what a trial court considering maintenance is supposed to do. *See id.*

¶28 Likewise, we cannot conclude that the trial court erred in imputing income to Eric. Eric contends that his decision to retire was reasonable, particularly given his bipolar disorder, a recent knee surgery, and the fact that construction jobs have been difficult to come by since the 2008 recession. However, he never testified that he is unable to work. Moreover, as noted, Eric has a long history of taking jobs in various settings—not just in construction. Given this information, we cannot conclude that the trial court erroneously exercised its discretion in imputing income to Eric.

¶29 As for the marital home, Eric's arguments are conclusory and not supported by enough detail for us to conclude that the apportionment of responsibility for the maintenance and sale of the marital home is a factor the trial court should or should not have considered in denying maintenance. Therefore, we will not consider this argument further. *See Waste Mgmt. of Wis.*, 81 Wis. 2d at 564.

¶30 Finally, we agree with the trial court that Katalin's Crohn's disease was a major factor supporting the denial of maintenance. Katalin not only testified that her Crohn's disease was very serious—requiring numerous surgeries and numerous, expensive prescription medications to manage, some of which were not covered by her health insurance—but also that it was the driving force in her decision to consider retiring soon.

¶31 In sum, we conclude that the trial court properly considered the required statutory factors and objectives in denying maintenance to Eric, and did not erroneously exercise its discretion. Therefore, we will affirm the denial of maintenance.

By the Court.—Judgment affirmed.

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